

APPEAL NO. 040269
FILED MARCH 22, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 15, 2004. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that the appellant (carrier) is not relieved of liability because the claimant reported the injury within 30 days; and that the claimant had disability on March 14, 2003, from April 14 through May 23, 2003, and from June 5, 2003, through the date of the CCH. The carrier appealed the hearing officer's determinations based on sufficiency of the evidence grounds. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant, a crane operator, testified that he was working light duty from a previous elbow injury when he sustained an injury to his right knee on _____. The claimant testified that he slipped and fell back from a beam and injured his right knee. The claimant continued to work, and a few days later his right leg began to swell. The claimant sought medical treatment on March 14, 2003, and he was diagnosed with a knee sprain. The claimant testified that he reported his injury to his employer on March 14, 2003, when he went to the employer's place of business to pick up his paycheck. The claimant was taken off work from April 14 through May 23, 2003. An MRI of the right knee dated May 16, 2003, reflects a "mild partial tear of the anterior cruciate ligament with grade I medial collateral ligament injury." The claimant returned to work, however he was terminated from his employment due to a reduction in force on June 5, 2003. The claimant testified that he was unable to work due to his knee injury. The claimant's supervisor and the employer's workers' compensation handler both testified that the claimant did not report an injury of _____. The supervisor testified that the claimant did not appear to have any problems with his knee while he was working. There is conflicting evidence.

The questions of whether the claimant sustained a compensable injury, whether he timely reported his injury, and whether he had disability, presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence. The hearing officer was persuaded by the claimant's testimony that he sustained a compensable injury, that he reported his injury to his employer within 30

days, and that he had disability. The carrier argues that the reduction in workforce, not the compensable injury, resulted in the claimant's inability to obtain and retain employment at wages equivalent to the preinjury wage after June 5, 2003. Whether the claimant's unemployment was due to the compensable injury or the reduction in force was entirely a fact call for the hearing officer. The hearing officer commented in the Statement of the Evidence paragraph that the claimant "has not yet returned to work, and still has problems with the knee that would prevent him from performing the full range of his employment duties." The hearing officer was persuaded by the claimant's testimony that he had disability from June 5, 2003, to the date of the CCH, due to the claimant's compensable knee injury. Disability may be proven by the claimant's testimony alone if believed by the hearing officer. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **COMMERCE & INDUSTRY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge